



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
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Commissioner

March 13, 2006

Linda Murphy  
Director  
Office of Ecosystem Protection  
U.S. Environmental Protection Agency  
Region 1  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

Re: Mass DEP approach to variances for CSO discharges by the MWRA in the Lower Charles River and Alewife Brook/Mystic River Basins

Dear Ms. Murphy:

On September 15, 2005 the Environmental Protection Agency ("EPA"), Region 1, approved the Massachusetts Department of Environmental Protection's ("MassDEP") August 22, 2005 submittal of extension of variances for CSO discharges by the Massachusetts Water Resources Authority ("MWRA") in the Lower Charles River and Alewife Brook/Mystic watersheds. These variance extensions were issued by MassDEP, after public review and comment, in the Fall of 2004 for terms not to exceed three years. As your September 15, 2005 approval states, EPA agrees with MassDEP that it is not feasible to fully attain Class B water quality standards within the three-year terms of these variances.

Following EPA's previous approval, there have been discussions between MassDEP and EPA about how MWRA has satisfied the requirements for variances through the year 2020. As explained below, because MassDEP believes, and EPA concurs, that the conditions supporting the 2004 variances will remain in place through 2020, we agree that the best approach to addressing this situation is as follows. MassDEP would resubmit the variances with this letter requesting EPA to approve them through 2020, based on the understanding that MassDEP will periodically reissue the variances through this time period after holding public hearings for public comments and determining that there is no substantial change in conditions. EPA and MassDEP recognize that pursuant to MWRA's implementation of its 1997 Combined Sewer Overflow Facilities Plan, as amended, August 2005, the MWRA, as well as area communities,

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will be undertaking substantial CSO control work for several years that will significantly improve water quality in the above water bodies.

MassDEP hereby resubmits the variances based on the following considerations:

- *All of the CSO discharges in the MWRA area cannot be feasibly eliminated.* The MWRA's revised LTCP incorporates all cost-effective and feasible CSO abatement projects in the Charles River and Alewife Brook/Mystic River watersheds. At this point in time, it does not appear technically feasible to eliminate all CSO outfalls to these watersheds given the engineering and infrastructure constraints in the MWRA interceptor system, headworks, conveyance tunnels, the Deer Island treatment plant, and the ocean outfall.
- *It remains unclear whether the Class B water quality standards for these waters can ultimately be achieved.* Analyses completed by the MWRA indicate that substantial stormwater pollutant loadings remain in the Charles River and Alewife Brook/Mystic River watersheds. Actions are underway in each of these watersheds to remediate stormwater discharges, including aggressive measures to identify and remove illegal sewer connections. However, it remains unclear at this time whether the Class B water quality standards for these waters can be met through the implementation of these ongoing stormwater controls. Therefore, additional time will be needed before MassDEP can make a definitive determination as to whether Class B water quality standards have or can be achieved for these waters.
- *Implementation of controls to achieve Class B standards all of the time would result in substantial and widespread economic and social impact.* The cost of the MWRA's CSO control program is substantial, at present, estimated by the MWRA to be \$850 million. The MWRA's detailed financial impact assessment considered the effect of expected sewer rate increases, and, appropriately, median household income as adjusted by the relatively high cost of housing in the Boston area. In short, the MWRA adequately demonstrated that proceeding at this time with CSO controls necessary for full attainment of Class B water quality standards would result in substantial and widespread economic and social impact.

MassDEP's record indicates that the conditions supporting the variances for the Charles River and Alewife Brook/Mystic River watersheds will remain in place through the year 2020, covering the time period of the MWRA's implementation of its revised LTCP and a performance assessment of the results of the LTCP's implementation. MassDEP's conclusion is further supported by EPA's own updated evaluation, dated December 7, 2005, of the financial impact on the MWRA ratepayers of requiring the MWRA to implement a level of CSO controls necessary to achieve Class B water quality standards all of the time. As explained in the attached memo dated March 3, 2006, MassDEP has also concluded that that this information demonstrates that requiring the MWRA to implement a level of CSO controls necessary to achieve Class B will cause substantial and widespread economic impact through 2020.



Accordingly, MassDEP will issue five (5) consecutive variances of no more than a three-year duration each, with a final expiration date of 2020, for the Charles River and Alewife Brook/Upper Mystic River that, as applied to the MWRA only, are consistent with and limited to the requirements in the MWRA's revised LTCP. At the end of each variance, MassDEP will make a draft determination on whether there is any reason not to reissue the variance. MassDEP's draft variances will be subject to public comment and a public hearing, and provide notice and an opportunity to comment by the MEPA office within EOE. Based on its review of public comments and absent a substantial change in conditions, MassDEP will reissue the variances, as applied to the MWRA only, provided the MWRA is achieving the level of CSO controls required in the LTCP and has completed the projects in the LTCP in accordance with the schedule in the amended Court Order.

MassDEP requests that EPA approve MassDEP's reissuance of the variances, as applied to the MWRA only, through the year 2020 based on the same assumptions and conditions, outlined above, necessary to support a variance reissuance by MassDEP.

If you have any more specific questions concerning MassDEP's approach in this matter, please contact me at (617) 292-5748.

Sincerely,



Glenn Haas  
Acting Assistant Commissioner  
Bureau of Resource Protection

Enclosures

cc: Frederick Laskey, Executive Director, MWRA